IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4255 of 2004
With
SPECIAL CIVIL APPLICATION No. 5213 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALVANTRASI POPATLAL FICHADIA & 24 - Petitioner(s)
Versus
UNION BANK OF INDIA & 2 - Respondent(s)

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Appearance :
SCA NO.4255/04 :

MR PARESH UPADHYAY for Petitioner(s) : 1 - 25.
MRS SANGEETA N PAHWA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 – 3.

SCA NO.5213 OF 2005

MR CL SONI for the petitioners
M/s Nanavati Associates for respondent No.1
RULE SERVED for Respondent(s) : 2 – 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/07/2006

ORAL JUDGMENT

1. The petitioner in Special Civil Application No.5213 of 2005 is the association of retired employees of Bank of India while petitioners in Special Civil Application No.4255 of 2004 are the retired employees of Union Bank of India. Facts and legal controversies arising in these petitions are identical and therefore, both these petitions are disposed of together.

2. The petitioners opted for voluntary retirement pursuant to the schemes framed by the respective banks. They were permitted to retire on voluntary retirement basis pursuant to the said schemes. It is not in dispute that in the scheme it was clearly provided that the option once exercised shall be final. The petitioners earlier having opted for provident fund now wish to switch over to the pension scheme. The main contention of the petitioners is that earlier the service regulations provided that any strike resorted to by the employee will be treated as break in service and the past service shall not count towards pensionary benefits. This prompted the petitioners to opt for provident fund and not pension. Certain changes were thereafter made in the regulations which initially provided that any illegal strike would visit with such an eventuality. Subsequently, however, even reference to illegal strike was also completely dropped. In the nutshell, therefore, the case of the petitioners is that

now that the service regulations make no provisions for wiping out the past service of employees even if there has been some instance of participating in strike, the petitioners' situation would undergo material change and they should be permitted to switch over their option to pension scheme.

3. It is not in dispute that the petitioners had consciously opted for provident fund scheme. It is also not in dispute that in terms of the scheme formulated by the banks, they had opted for voluntary retirement. The petitioners thus retired accepting certain lump-sum package of emoluments provided under the scheme. This was so on the basis of their option for being included in the provident fund scheme. The request for permitting them to change the options cannot be accepted for variety of reasons. Firstly, the voluntary retirement scheme was a package deal and the petitioners accepted the benefits flowing therefrom. They cannot now seek to change their position. Secondly, the service regulations had already undergone changes even before the petitioners opted for VRS. Now to base their claim on some changes in the service regulations would therefore not be permissible. I find that a Division Bench of the Bombay High Court under similar circumstances had also turned down the request of the petitioners therein. The decision of the Bombay High Court is placed on

record by the learned advocates for the respondents. It is pointed out that the SLP filed by the concerned employees have also been rejected by the Hon'ble Supreme Court.

4. Considering all these aspects of the matter, I do not find that the petitioners have made out any case for interference. The petitions are therefore rejected. Rule discharged.

(Akil Kureshi, J.)

(vjn)